

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANDREW LEYVA,)
)
Petitioner,)
)
v.) Docket No. 3223-13.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This case is before the Court on respondent's Motion for Summary Judgment and to Impose a Penalty Under I.R.C. Sec. 6673, filed August 1, 2013.¹ Petitioner filed a reply in opposition to respondent's motion on September 5, 2013. As discussed in detail below, we will grant respondent's motion.

The following facts, drawn from the pleadings and respondent's motion and the declarations and exhibits attached thereto, are not in dispute.

Petitioner was employed by SkyWest Airlines as an airline pilot during 2009 and he earned \$85,182 in wages that year. On or about October 15, 2010, he submitted to the Internal Revenue Service (IRS) a Form 1040, U.S. Individual Income Tax Return, for 2009. Petitioner reported that he had no taxable wages and income tax withholding of \$4,075, and he requested a refund of all income, Social Security, and Medicare taxes withheld and paid for 2009.

On November 7, 2012, respondent issued to petitioner a notice of deficiency for 2009 determining a tax deficiency of \$14,948 and an accuracy-related penalty under section 6662(a) of \$2,174.80. The deficiency was attributable to petitioner's failure to report wages and other income reflected in information returns submitted to the IRS by third-party payors including SkyWest and Merrill Lynch.

¹All section references are to the Internal Revenue Code, as amended and in effect for 2009, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Petitioner timely filed a petition for redetermination with the Court. The petition includes allegations that petitioner's earnings are not gross income within the meaning of section 61 and that he "is not domiciled in a Federal District or in a geographical location that is under the exclusive jurisdiction of the United States government". At the time the petition was filed, petitioner resided in Arizona.

As indicated, respondent filed a motion for summary judgment and for the imposition of a penalty under section 6673. Petitioner filed a reply to respondent's motion repeating and expanding on the frivolous arguments set forth in the petition.

Summary judgment is intended to expedite litigation and avoid unnecessary and expensive trials. Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Summary judgment may be granted with respect to all or any part of the legal issues in controversy "if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits or declarations, if any, show that there is no genuine dispute as to any material fact and that a decision may be rendered as a matter of law." Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994). We hold that there is no genuine dispute as to any material fact and that respondent is entitled to judgment as a matter of law.

Petitioner failed to allege any facts in his petition or reply to respondent's motion contradicting the essential allegations in respondent's motion or identifying a genuine dispute as to a material fact. Petitioner simply makes vague arguments that he is not required to pay income taxes on his wages and other earnings, and is not liable for an accuracy-related penalty. Simply put, petitioner's arguments are frivolous and groundless. Under the circumstances, we see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

Section 6662(a) imposes a penalty equal to 20 percent of the portion of the underpayment of tax required to be shown on a return. The penalty applies when the underpayment is attributable to a substantial understatement of income tax. Sec. 6662(b)(2). A substantial understatement of income tax occurs when the taxpayer understates his income tax by an amount that exceeds the greater of (1) 10

percent of the tax required to be shown on the return for the taxable year, or (2) \$5,000. Sec. 6662(d)(1)(A).

The tax return petitioner submitted to the IRS for 2009 contained entries of zero on every income line and reported tax of zero. In fact, petitioner's correct tax liability for 2009 is \$14,948. Because the amount of the understatement exceeds both 10 percent of the tax required to be shown on petitioner's return, as well as \$5,000, there was a substantial understatement within the meaning of section 6662. Consequently, the accuracy-related penalty under section 6662(a) applies to the understatement of tax reported on petitioner's 2009 return.

Section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of \$25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless. We note that petitioner is no stranger to the Court.² Notwithstanding the imposition of a penalty under section 6673 at docket No. 25427-09, petitioner has persisted in making frivolous arguments to this Court in this case. We can only conclude that petitioner instituted these proceedings primarily for the purpose of delay. Under the circumstances, we conclude that a section 6673 penalty of \$15,000 is well-warranted here.

Upon due consideration and for cause, it is hereby

ORDERED that respondent's Motion for Summary Judgment and to Impose a Penalty Under I.R.C. § 6673, filed August 1, 2013, is granted. It is further

²Petitioner previously filed a petition for redetermination with the Court at docket No. 25427-09 making the same frivolous arguments that he has presented in this case. On Dec. 10, 2010, the Court issued a bench opinion at docket No. 25427-09 rejecting petitioner's arguments and imposing a \$5,000 penalty pursuant to section 6673. The Court warned petitioner that "the [section 6673] penalty will likely be imposed again and increase in amount if he persists in making similar arguments to this Court in other cases." On Sept. 21, 2012, the Court of Appeals for the Ninth Circuit affirmed the Tax Court's decision in docket No. 25427-09. Leyva v. Commissioner, 483 Fed. Appx. 371 (9th Cir. 2012).

ORDERED AND DECIDED that petitioner is liable for a \$14,948 Federal income tax deficiency and a \$2,174.80 accuracy-related penalty under section 6662(d) for 2009. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty in the amount of \$15,000 pursuant to section 6673.

(Signed) Daniel A. Guy, Jr.
Special Trial Judge

ENTERED: **JAN 23 2014**